
EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 WACO DIVISION
4 VIDEOSHARE, LLC,) (CIVIL ACTION NO.
5 PLAINTIFF,) (6:21-CV-254-ADA
6) (
7 VS.) (WACO, TEXAS
8) (
9 META PLATFORMS, INC.,) (FEBRUARY 18, 2022
10 DEFENDANT.) (9:30 A.M.

11 DISCOVERY HEARING
12 BEFORE THE HONORABLE ALAN D ALBRIGHT
13 UNITED STATES DISTRICT JUDGE

14 FOR THE PLAINTIFF: Mr. William D. Ellerman
15 Mr. Ari Rafilson
16 Mr. Mark D. Siegmund
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10:03:56 1 That's -- that's just more speculation. There --
10:04:00 2 there is nothing here to suggest that anything in this
10:04:03 3 re-exam is going to simplify this trial.

10:04:08 4 THE COURT: Okay. I'm -- I'm going to take this
10:04:11 5 under advisement. I think it's important that I give it a
10:04:18 6 little bit of thought. I thought the arguments were very
10:04:21 7 helpful on both sides.

10:04:22 8 And the final issue I have up is the Plaintiff's
10:04:25 9 request for additional time.

10:04:28 10 I'll hear from the Plaintiff.

10:04:30 11 MR. ELLERMAN: Yes, Your Honor.

10:04:31 12 We've -- we've asked for a very short extension of
10:04:34 13 the deadline for adding parties, just -- I think it's until
10:04:37 14 March 2nd, if I'm not wrong.

10:04:39 15 Actually, we asked to extend two deadlines. First
10:04:44 16 was the deadline for serving final contentions and the
10:04:48 17 deadline to add parties. Meta agreed to the extension for
10:04:48 18 final contentions, which will be the end of March, but it
10:04:53 19 won't agree to the party deadline, which is a much shorter
10:04:56 20 extension, and its response doesn't really give a basis for
10:04:59 21 that.

10:05:00 22 The reasons for both extensions were the same. We
10:05:02 23 served written discovery immediately after the Markman.
10:05:06 24 And the responses to that discovery were due on the date
10:05:09 25 for the deadline for adding parties, which was just last

10:05:11 1 week.

10:05:11 2 Meta still has not produced responsive documents,
10:05:15 3 and I assume they're waiting on the PO to get entered. But
10:05:20 4 right after the Markman, we also noticed a deposition of a
10:05:23 5 Facebook engineer that would occur well before the deadline
10:05:26 6 to add parties. Meta delayed that deposition for over a
10:05:30 7 month, and we just got to take it this week.

10:05:33 8 Obviously, the Court knows we haven't been able to
10:05:35 9 look at the source code yet, given the protective order
10:05:38 10 issues. And -- and we still don't believe we have adequate
10:05:42 11 documentation for all of the Facebook accused products, and
10:05:46 12 we're negotiating with them about that, too.

10:05:48 13 So all this means is we haven't had an opportunity
10:05:51 14 to make a final decision about adding parties. And there's
10:05:55 15 no secret here about the party we may or may not add, that
10:06:00 16 it's Instagram. And we've actually accused the Instagram
10:06:06 17 platform in this lawsuit in our complaint and our
10:06:09 18 infringement contentions.

10:06:09 19 Meta owns Instagram, it's marketed as a Meta
10:06:13 20 product, and the -- the limited technical documentation
10:06:16 21 we've received thus far indicates that Instagram uses the
10:06:20 22 exact same back end systems as Facebook does to infringe
10:06:24 23 the patent.

10:06:24 24 So we may not need to add them, but even if we do,
10:06:28 25 it isn't going to alter the scope of this case at all. The

10:06:31 1 accused products are going to remain the same. The parties
10:06:33 2 are really going to remain the same. We're just seeking a
10:06:38 3 modest extension so we can evaluate the discovery that we
10:06:41 4 just obtained and the additional discovery that we expect
10:06:45 5 to receive very shortly.

10:06:47 6 That's all I have on that, Your Honor.

10:06:51 7 THE COURT: A rebuttal?

10:06:55 8 MR. MOORE: Good morning. May it please the
10:06:57 9 Court. This is Steven Moore for Meta Platforms.

10:06:58 10 The problem with this argument, Your Honor, is
10:07:01 11 they actually did not accuse Instagram. While, yes, it is
10:07:04 12 mentioned in the complaint and it is mentioned in the
10:07:07 13 preface to the infringement contentions, there's no claim
10:07:08 14 chart on Instagram. There's no showing that Instagram
10:07:11 15 somehow works the same way as Facebook Live. And they are
10:07:14 16 separate platforms. And so we think that's really
10:07:18 17 dispositive of this issue.

10:07:19 18 They finally told us an hour ago that Instagram is
10:07:23 19 the party they want to add, but they've known of Instagram
10:07:26 20 since they filed the complaint since they mentioned it
10:07:29 21 there. They just chose not to file a claim chart on it.

10:07:32 22 And I don't know if they're going to try to move
10:07:34 23 for leave to -- to do that in amended contentions. That
10:07:37 24 would be another reason this case would -- would also be
10:07:39 25 delayed if that were permitted.

10:07:42 1 But they don't need anything else to know whether
10:07:44 2 to try to add Instagram. Its -- its existence has never
10:07:49 3 been a secret, and they sued Facebook without any of the
10:07:53 4 discovery that they just told you that they so badly need
10:07:55 5 to know whether they should add Instagram.

10:07:58 6 So really I think it comes down to a lack of
10:08:01 7 diligence on their part, and this deadline to amend -- to
10:08:06 8 add parties has been at this same place in the scheduling
10:08:08 9 order all along. It's always been the case that there
10:08:11 10 wasn't going to be very much discovery before that deadline
10:08:13 11 came up.

10:08:14 12 So, frankly, they -- if they wanted Instagram in
10:08:16 13 the case, they had what they needed. They chose not to
10:08:20 14 chart Instagram as an accused product. And they could have
10:08:23 15 tried to add -- either sue them originally or add them
10:08:27 16 earlier. We certainly don't think it's worth slowing the
10:08:28 17 case down yet further to add another platform which would
10:08:30 18 require more witnesses and which frankly I think helps even
10:08:34 19 further tip the balance towards a stay because it's likely
10:08:37 20 the case would be delayed if another party were added.

10:08:40 21 And that's all I have, Your Honor.

10:08:42 22 THE COURT: Here's what I'm going to do, I'm going
10:08:44 23 to extend the deadline for -- excuse me -- the Plaintiff to
10:08:50 24 do this, but that should not imply that -- I heard all the
10:08:55 25 arguments that counsel for Meta just made, which might be a

10:09:01 1 reason for Meta to come back and either -- you know, and
10:09:06 2 have some -- and need some relief.

10:09:11 3 I don't know what the Plaintiff is going to do,
10:09:13 4 but if the Plaintiff were to add another party at this
10:09:15 5 point and Meta came in and said they needed relief in the
10:09:19 6 form of additional contentions, additional time -- whatever
10:09:22 7 it is, I'm not going to suggest, you guys are good
10:09:25 8 lawyers -- but it seems to me that -- it seems to me to be
10:09:30 9 on the wrong side of it to say at this point that the
10:09:34 10 Plaintiff cannot attempt to add a party.

10:09:37 11 However, if the Plaintiff does decide to add a
10:09:40 12 party, then I certainly will -- I will make sure that it's
10:09:46 13 fair to both parties and Instagram, or whomever it is that
10:09:51 14 gets added, that they -- that they're treated fairly in the
10:09:56 15 litigation, as well.

10:09:57 16 So with that caveat, or proviso, I'm going to
10:10:01 17 allow -- I don't know if the Plaintiff is going to add
10:10:04 18 anyone, I don't know if it will be Instagram, I don't know
10:10:07 19 what they're going to do, but if the Plaintiff does add any
10:10:09 20 additional parties, then counsel for Meta is welcome to
10:10:12 21 come back to the Court.

10:10:14 22 I would -- I would talk with Plaintiff's counsel
10:10:17 23 first about what you-all can work out without my
10:10:20 24 assistance, but if -- if there are issues that Meta thinks
10:10:23 25 needs to occur -- if there are -- are schedule changes or

10:10:29 1 discovery, whatever it is that comes up that Meta believes
10:10:32 2 it's entitled to some relief on and the Plaintiff
10:10:36 3 believes -- doesn't believe that and you-all need to come
10:10:39 4 back to the Court, I'll certainly take it up then, and you
10:10:42 5 can just reach out to Peter, and we'll get something --
10:10:44 6 we'll get something set up in the form of a hearing.

10:10:47 7 I think that was all that I had, but I'll go first
10:10:49 8 to counsel for Plaintiff and ask if there's anything else
10:10:52 9 that we needed to take up?

10:10:55 10 MR. ELLERMAN: I believe that's it, Your Honor.

10:10:56 11 THE COURT: And I will go with Ms. Amstutz, but
10:11:01 12 anyone can answer for Meta.

10:11:05 13 MS. AMSTUTZ: I believe that's all for the
10:11:06 14 Defendant, Your Honor.

10:11:07 15 THE COURT: Okay. You guys have a good weekend.

10:11:10 16 I look forward hopefully to seeing at least some of you in
10:11:13 17 person in the near future. But have a good weekend in the
10:11:17 18 interim.

10:11:17 19 And we'll get an order out I think hopefully very
10:11:21 20 quickly with regard to the motion to stay. I thought the
10:11:23 21 arguments on both sides were very informative and -- and
10:11:28 22 very helpful.

10:11:29 23 So take care. Have a good weekend. Bye.

10:11:34 24 (Hearing concluded at 10:11 a.m.)

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